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61-7-L

December 16, 1960

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ARIZONA ATTORNEY GENERAL

State Tax Commission of Arizona
Statehouse
Phoenix, Arizona

Attention: Mr. Donald E. Green
Director
Income Tax Division

Re: Manner in which assets of ARIZONA
TRAFFIC SAFETY FOUNDATION, a non-
profit charitable corporation, will
be distributed upon dissolution.

Dear Mr. Green:

Since our letter of August 18, 1960, wherein this office concluded that the assets of a non-profit charitable corporation be distributed to the shareholders subject to the rights of its creditors, we have received additional information which sheds a new light on this matter.

We call your attention to Articles III and IV of the Articles of Incorporation and Article XI of the By-laws which provide as follows:

"Article III. The purposes of this corporation, which do not contemplate pecuniary gain or profit or the distribution of gains, profits, or dividends to members thereof, are: . . .

Article IV. The corporation is organized as and shall continue to be one for which pecuniary profit is not an object and no dividends shall ever be declared and no part of the net earnings shall inure to the benefit of any shareholder or individual. No substantial part of the activities of the corporation shall be for the purpose of carrying on propaganda or otherwise attempting to influence legislation or for the purpose of participating in any political campaign. There shall be no capital stock."

"Article XI. Distribution of Property in
Event of Liquidation.

Section 1. The property of this Foundation is irrevocably dedicated to scientific and educational purposes for the prevention and reduction of street and highway traffic accidents; and in the event of liquidation, dissolution, or abandonment of the Foundation will not inure to the benefit of any private person, but shall be distributed to a fund, foundation, corporation, or association, organized and operated exclusively for scientific or educational purposes, and which meets the requirements of Section 501 (c) (3) of the Internal Revenue Code of 1954 and corresponding sections of subsequent revenue acts."

As pointed out in the earlier opinion, the general rule of law on the distribution of corporate assets upon dissolution is stated in Norton v. Steinfeld (1930) 36 Ariz. 536, 288 P. 3. However, the facts in that case can be distinguished from the instant situation since the documents creating the corporation were silent with respect to distribution in the event of dissolution and no reference to by-laws is made. Under the facts presented herein, it is clear that the above-quoted Articles and By-law require the assets to be diverted to the purpose most nearly akin to the intent of the donors.

After having read the Articles of Incorporation in conjunction with Article XI of the By-laws, we conclude, without adopting the cy pres doctrine, that upon dissolution those corporate assets remaining would be required to be used for exclusively scientific or educational purposes in accordance with the requirements of Section 501 (c) (3) of the Internal Revenue Code of 1954 and corresponding sections of the subsequent revenue acts.

Very truly yours,

WADE CHURCH
The Attorney General

ARTHUR E. ROSS
Assistant Attorney General

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